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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,226	06/20/2003	Robert F. Burkholder	JK01507A	9184
28268	7590	09/05/2006	EXAMINER	
THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286			FREAY, CHARLES GRANT	
			ART UNIT	PAPER NUMBER
			3746	

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/601,226		BURKHOLDER ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Charles G. Freay		3746	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 3-7, 10, 12, 22, 24 and 27-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8, 9, 11, 13-21, 23, 25 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/2006</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

This office action is in response to the amendment of July 25, 2006. In making the below rejections the examiner has considered and addressed each of the applicant's arguments.

Further the examiner notes that the previous office was completed on April 3, 2006. The January 25, 2006 mail date was obviously a typographical error and has been corrected.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 11, 12, 20 and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nelson et al (USPN 5,300,178).

Nelson et al discloses a portable (Figs. 1 and 2) air compressor and a tank (22 see col. 6 lines 18-22) enclosed within a shroud (40) which is made of plastic (note the discussions of the materials for the different embodiments set forth in columns 7 and 8). Nelson et al make no mention of the tank being painted or unpainted. Therefore, the tank is either already unpainted or it would have been obvious to one of ordinary skill in the art to not paint the tank since the tank is covered by the shroud and painting the tank would only increase manufacturing cost to add an aesthetic appeal to the tank which is going to be covered by the shroud and unseen anyways.

Claims 1, 2, 13, 17, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stenge et al (USPN 5,328,096).

Stenge et al discloses a portable (note the cart of Fig. 1) air compressor (18) and a tank (20) enclosed within a shroud (14). The tank has first and second air access ports located on it's top surface. Stenge et al make no mention of the tank being painted or unpainted. Therefore, the tank is either already unpainted or it would have been obvious to one of ordinary skill in the art to not paint the tank since the tank is covered by the shroud and painting the tank would only increase manufacturing cost to add an

aesthetic appeal to the tank which is going to be covered by the shroud and unseen anyways.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stenge et al.

As set forth above Stenge et al disclose the invention substantially as claimed but do not disclose the air access port both supplying and discharging air to the tank. The examiner gives official notice that air tanks having a single access port, with the associated valving being outside the tank, are well known. At the time of the invention it would have been obvious to one of ordinary skill in the art to substitute such single port arrangement for the two port arrangement of the tank shown in Stenge et al in order to reduce the tubing required and also the number of air access ports provided in the tank.

Claims 8, 9, 15, 16, 18, 19, and 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Stenge et al as applied to claims 1, 13 and 14 above, and further in view of Moynihan et al (USPN 4,712,983).

As set forth in the above rejection Stenge et al discloses the invention substantially as claimed but does not disclose first and second air access ports located at top and bottom ends of the tank and the tank being made of metal or steel. Moynihan discloses an air compressor (22) and air tank (80) arrange (see Fig. 2) having first (70) and second (90) air access ports for the tank. At the time of the invention it would have been obvious to one of ordinary skill in the art to substitute an air tank having the ports

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arranged at opposite ends of the tank as disclosed by Moynihan in order to create, and dependant upon, the required spacing in the cart and the desired connection location for the outlet of the air tank. For example, a vertically arranged air tank would allow for a shorter arrangement.

Additionally, Stenge et al do not disclose that the tank is made of metal or steel. Stenge et al at col. 3 lines 29 and 30 discloses that the elements of the invention can be made of steel (a metal). Therefore and the time of the invention it would have been obvious to one of ordinary skill in the art to make the tank of steel as a well known durable and relatively cheap material.

Claims 8, 9 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al in view of Spohrer (USPN 1,998,338).

As set forth above Nelson et al disclose the invention substantially as claimed. Nelson et al do not however disclose that the tank is made of metal or steel. Spohrer discloses an air compressor (46,460) and tank (1) arrangement. As set forth at col. 1 lines 42-45 the tank is made of metal. At the time of the invention it would have been obvious to make the storage tank discussed in Nelson et al of metal or steel (a well known metal) since as taught by Spohrer making the air tank of steel was well known in air compressor arrangements and would provide a durable air storage tank.

Claims 13, 15-19, 23, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krentz et al (USPN 6,094,773) in view of Moynihan.

Krentz et al discloses a portable air compressor (18) arrangement having a plastic shroud (note lines 1-5 of col. 6) which has a carrying handle (64) and a control panel (46). Krentz et al does not disclose an air tank with the associated porting (as set forth in claims 15-19). As noted earlier Moynihan discloses an air compressor arrangement having a metal air storage tank having two air access ports. At the time of the invention it would have been obvious to one of ordinary skill in the art to supply an air tank having the ports arranged at opposite ends of the tank as disclosed by Moynihan in order to create, and dependant upon, the required spacing in the cart and the desired connection location for the outlet of the air tank. For example, a vertically arranged air tank would allow for a shorter arrangement.

### ***Response to Arguments***

Applicant's arguments, especially with respect to independent claims 1 and 13 and the Stenge et al and Nelson et al references, have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).




A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
August 28, 2006